

S168281

Case No.: _____
**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

Asian Pacific American Legal Center, California State Conference of
the NAACP, Equal Justice Society, Mexican American Legal Defense
and Education Fund, and NAACP Legal Defense Fund,

Petitioners,

v.

**SUPREME COURT
FILED**

NOV 14 2008

Mark D. Horton, in his official capacity as State Registrar of Vital
Statistics of the State of California and Director of the California
Department of Public Health; Linette Scott, in her official capacity as
Deputy Director of Health Information & Strategic Planning for the
California Department of Public Health; and Edmund G. Brown, Jr.,
in his official capacity as Attorney General for the State of California,

Respondents;

**MOTION TO APPEAR AS COUNSEL *PRO HAC VICE*;
MEMORANDUM OF POINTS AND AUTHORITIES; AND
DECLARATION OF TOBIAS BARRINGTON WOLFF**

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Mexican American Legal Defense and Education Fund, and NAACP
Legal Defense Fund*

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MOTION TO APPEAR AS COUNSEL PRO HAC VICE

Pursuant to Rule 8.54 and Rule 9.40 of the California Rules of Court, Tobias Barrington Wolff, an attorney for the Equal Justice Society, hereby moves this court for an order granting his appearance pro hac vice in this action. This motion is based on the memorandum of points and authorities and the accompanying declaration of Tobias Barrington Wolff. This motion is made on the grounds that Professor Wolff fulfills the requirements of Rule 9.40, and that he is knowledgeable about the facts and legal principles at issue in this writ action. Thus, his participation as counsel will lend significant expertise to the proceedings, furthering the cause of justice.

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 9.40 of the California Rules of Court sets forth the procedure by which an attorney who is not a member of the State Bar of California may, in the discretion of the court, be admitted to appear as counsel pro hac vice. In particular, Rule 9.40(a) provides that no person is eligible to appear as counsel pro hac vice if the attorney (1) is a resident of the State of California, or (2) is regularly employed in the State of California, or (3) is regularly engaged in substantial business, professional or other activities in the State of California. Professor Wolff does not fall within any of these three categories.

Rule 9.40(c) states that a person desiring to appear as counsel pro hac vice in the Supreme Court shall file with the Court an application as provided in Rule 8.54. The application shall state: (1) The applicant's residence and office address; (2) The courts to which the applicant has been admitted to practice and the dates of admission; (3) That the applicant is a member in good standing in those courts; (4) That the applicant is not currently suspended or disbarred in any court; (5) The title of court and cause in which the applicant has filed an application to appear as counsel pro hac vice in this state in the preceding two years, the date of each application, and whether or not it was granted; and (6) The name, address, and telephone number of the active member of the State Bar of California who is attorney of record. Rule 9.40(d). The declaration of Professor Wolff provides the information required by Rule 9.40(d) and has been served on all parties to this action and upon the State Bar of California at its San Francisco office (along with the \$50 fee required by Rule 9.40(e)). Professor Wolff understands that “[a] person permitted to appear as counsel pro hac vice under this rule is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California,” as provided in Rule 9.40(f). As required under Rule

9.40(f), he has familiarized himself and shall comply with the standards of professional conduct required of members of the State Bar of California. Professor Wolff is knowledgeable about the facts and legal principles at issue in this writ action, and his participation as counsel will lend significant expertise to the proceedings, furthering the cause of justice. Professor Wolff therefore respectfully requests that this Court admit him as counsel *pro hac vice* in this action.

DECLARATION OF TOBIAS BARRINGTON WOLFF

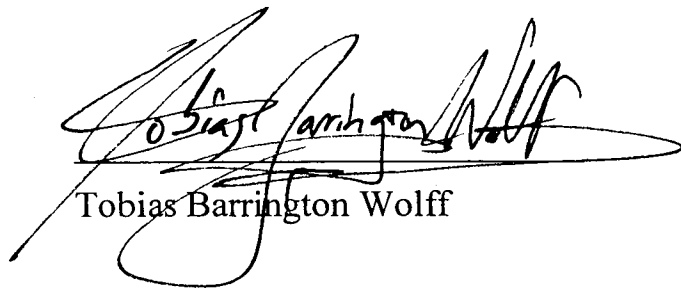
I, Tobias Barrington Wolff, declare as follows:

1. My residential address is 624 North Third Street, Philadelphia, Pennsylvania 19123. My office address is University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, Pennsylvania 19104.
2. I am admitted to practice law before the following courts:

<u>COURT</u>	<u>ADMITTED</u>
Court of Appeals of the State of New York	January 1999
United States. District Court for the Southern District of New York	February 1999
United States District Court for the Eastern District of New York	February 1999
United States District Court for the Southern District of California	May 2006
United States Court of Appeals for the First Circuit	November 2006
Supreme Court of Pennsylvania	January 2008

3. I am presently a member in good standing in those courts.
4. I am not currently suspended or disbarred in any court.
5. Within the preceding two years of this application I have made one application to appear as counsel pro hac vice in the State of California. The application was made on September 26, 2007 before the Supreme Court of California in the cause entitled *In re Marriage Cases*, Case No. S147999, and it was granted.
6. Eva Paterson (California Bar No. 67081), of the Equal Justice Society, 220 Sansome Street, 14th Floor, San Francisco, California 94104, (415) 288-8700, is attorney of record for the Asian Pacific American Legal Center, California State Conference of the NAACP, Equal Justice Society, Mexican American Legal Defense and Education Fund, and NAACP Legal Defense Fund, and is an active member of the State Bar of California.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of November, 2008 at Philadelphia, Pennsylvania.



Tobias Barrington Wolff

CONSENT TO DESIGNATION

I hereby consent to the foregoing designation.

Dated: Nov. 14, 2008

A handwritten signature in cursive script, appearing to read "Eva Paterson", written over a horizontal line.

Eva Paterson

Executed under penalty of perjury on this 14th day of November at
San Francisco, California.

By:

A handwritten signature in cursive script, appearing to read "Eva Paterson", written over a horizontal line.

Eva Paterson (No. 67081)
Equal Justice Society
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PROOF OF SERVICE

I, Jamie Paek, declare as follows:

I am over the age of 18, and not a party to this action. My business address is Three Embarcadero Center, San Francisco, California 94111.

On November 14, 2008, I served the following document:

**MOTION TO APPEAR AS COUNSEL *PRO HAC VICE*;
MEMORANDUM OF POINTS AND AUTHORITIES ;
AND DECLARATION OF TOBIAS BARRINGTON
WOLFF IN SUPPORT THEREOF**

in the following manner:

- ☐ **BY PERSONAL SERVICE:** I caused the document(s) to be delivered by hand.
- ☒ **BY OVERNIGHT DELIVERY:** I caused such envelopes to be delivered on the following business day by FEDERAL EXPRESS service.
- ☐ **BY U.S. MAIL:** I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

on the following persons at the locations specified:

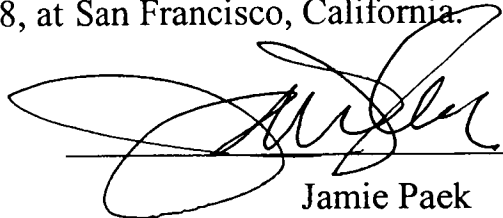
Mark B. Horton, MD, MSPH
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The State Bar of California
Office of Special Admissions and Specialization
180 Howard Street
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that this declaration is executed on November 14, 2008, at San Francisco, California.



Jamie Paek